

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-0469**

Minnesota Voters Alliance, et al.,  
Petitioners,

v.

State of Minnesota,  
Respondent,  
Minnesota Secretary of State Steve Simon,  
Respondent.

**Filed February 8, 2021  
Petition dismissed  
Reyes, Judge**

Erick G. Kaardal, Gregory M. Erickson, Mohrman, Kaardal & Erickson, PA, Minneapolis,  
Minnesota (for petitioners)

Keith Ellison, Attorney General, Nathan J. Hartshorn, Assistant Attorney General, St. Paul,  
Minnesota (for respondents)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Gaïtas,  
Judge.

**NONPRECEDENTIAL OPINION**

**REYES, Judge**

In this declaratory-judgment action under Minn. Stat. § 14.44 (2018), petitioners argue that the process for an absentee voter to certify the voter's eligibility under Minn. R. 8210.0225 (2019) (the rule) contradicts and exceeds the statutory authority of Minn. Stat. §§ 204C.12 (2018) and 201.121, subd. 2 (2018). Petitioners also seek fees and expenses

under the Minnesota Equal Access to Justice Act (MEAJA), Minn. Stat. §§ 15.471-.474 (2018). We conclude that, because petitioners’ alleged injury is speculative, hypothetical, and not attributable to the rule, they lack standing under section 14.44 to challenge the rule. We therefore dismiss the petition for declaratory judgment and deny the request for fees and expenses.

## **FACTS**

Petitioner Minnesota Voters Alliance (MVA) is an organization comprising members who seek to ensure “public confidence in the integrity of Minnesota’s elections,” election results, systems, and procedures, and to enforce election laws. MVA seeks to protect the rights of its members when a law, statute, rule, or regulation interferes with their rights and privileges related to voting.

Petitioners Mary Franson, Duane Quam, and Eric Lucero (candidate petitioners) are members of MVA who currently represent House Districts 8B, 25A, and 30B respectively, in the Minnesota House of Representatives and sought reelection in the 2020 election cycle.

Petitioner Cindy Pugh is also a member of MVA who represented Minnesota House District 33B from 2012 to 2018. Pugh lost her race for reelection in 2018. Petitioners conceded at oral argument that Pugh did not run for public office in the 2020 election cycle, but they assert she would like to run in the future.

Chapter 203B, which governs absentee voting, states, “Minnesota Election Law is applicable to voting by absentee ballot unless otherwise provided in this chapter.” Minn. Stat. § 203B.001 (2018). In Minnesota, absentee voters must certify that they will “meet[] all of the requirements established by law for voting by absentee ballot” by election day

subject to a felony for falsely certifying. Minn. Stat. §§ 203B.07, subd. 3 (2018); 203B.03, subds. 1(a)(1), 2 (2018); *see also* Minn. Stat. § 201.014 (2018).

**A. Eligibility requirements and grounds for ineligibility**

To be eligible to vote in Minnesota, a person must “(1) be 18 years of age or older, (2) be a citizen of the United States, and (3) maintain residence in Minnesota for 20 days immediately preceding the election.” Minn. Stat. § 201.014. A person is not eligible to vote if: “(1) convicted of treason or any felony whose civil rights have not been restored; (2) under a guardianship in which the court order revokes the ward’s right to vote; or (3) found by a court of law to be legally incompetent.” Minn. Stat. § 201.014, subd. 2. Respondent Minnesota Secretary of State receives reports regarding voters whose eligibility is challenged on any of the three ineligibility grounds, which the secretary sends to county auditors to change the status of those voters to “challenged.” Minn. Stat. § 201.145, subd. 2(d) (2018). “Any voter registered within a county may challenge the eligibility or residence of any other voter registered within that county” by submitting a petition to the county auditor stating grounds based on personal knowledge of the voter’s ineligibility to vote. Minn. Stat. § 201.195 (2018). Petitioners and respondents acknowledge that a challenge, alone, is not evidence of ineligibility but an indication of the mere possibility of ineligibility.

**B. Section 204C.12**

Chapter 204C is titled “ELECTION DAY ACTIVITIES,” and sections 204C.06 to 204C.18 govern “POLLING PLACE ACTIVITIES.” Minn. Stat. § 204C.12, titled “CHALLENGES TO VOTERS; PENALTY,” provides for an election judge to administer

an oath to a challenged individual and “then ask the challenged individual sufficient questions to test that individual’s residence and right to vote.” *Id.*, subd. 2. An election judge or “other voter” who has personal knowledge that a voter may not be eligible to vote can challenge that voter’s eligibility. *Id.*, subd. 1. Section 204C.12 also explains the consequences of failing to overcome this challenge before voting at the polling place:

A challenged individual who refuses to answer questions or sign a *polling place roster* or voter signature certificate as required by this section must not be allowed to vote. A challenged individual *who leaves the polling place* and returns later willing to answer questions or sign a polling place roster or voter signature certificate must not be allowed to vote.

*Id.*, subd. 4 (emphasis added).

### **C. Section 201.121**

A voter’s registration will also be challenged on residency grounds if the county auditor receives a return notice as not deliverable to the address provided by the voter.

Minn. Stat. § 201.121, subd. 2 (2018). Section 201.121 provides:

The county auditor shall mail a notice indicating the individual’s name, address, precinct and polling place to each registered voter. The notice shall indicate that it must be returned if it is not deliverable to the voter at the named address. Upon return of the notice by the postal service, the county auditor shall change the registrant’s status to “challenged” in the statewide registration system. An individual challenged in accordance with this subdivision shall comply with the provisions of *section 204C.12*, before being allowed to vote.

*Id.* (emphasis added).

**D. Rule 8210.0225**

Minn. R. 8210.0255 provides:

A voter registration application must be sent with the ballot to any challenged voter and to each voter whose voter registration application is incomplete under Minnesota Statutes, section 201.061, subdivision 1a, or 201.121, who applies for an absentee ballot. The absentee ballot process must be administered as if the voter was not registered to vote.

**DECISION**

Under Minn. Stat. § 14.44, an interested party may challenge the validity of an agency rule “when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.” The petitioner may seek to have a rule declared invalid if it (1) violates the constitution; (2) exceeds statutory authority; or (3) is adopted without compliance with rulemaking procedures. Minn. Stat. § 14.45 (2018). In this preenforcement context, this court is restricted to considering these three bases for declaring a rule invalid. *Coal. of Greater Minn. Cities v. Minn. Pollution Control Agency*, 765 N.W.2d 159, 164 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009). Petitioners only challenge the rule as exceeding statutory authority.

**I. Petitioners lack standing under Minn. Stat. § 14.44.**

As an initial matter, respondents argue that petitioners lack standing. We agree.

Courts apply general principles of justiciability governing declaratory-judgment standing to determine whether a party has standing under section 14.44. *See Rocco Altobelli, Inc. v. State, Dep’t of Commerce*, 524 N.W.2d 30, 34 (Minn. App. 1994) (citing

*State ex rel. Smith v. Haveland*, 25 N.W.2d 474, 477 (Minn. 1946)); *see also Arens v. Village of Rogers*, 61 N.W.2d 508, 512-13 (1953)). Under these principles, “[p]etitioners must have a direct interest in the validity of that rule which is different in character from the interest of the citizenry in general.” *Rocco Altobelli*, 524 N.W.2d at 34 (quotation omitted). Additionally, the mere possibility of injury or a mere interest in a problem cannot confer standing. *Id.*; *see also Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. App. 1993) (“Because IBEW’s ‘injury’ is speculative, we conclude IBEW lacks standing to pursue its claims.”), *review denied* (Minn. Apr. 20, 1993). Petitioners’ alleged harm cannot be speculative or “predicated on hypothetical facts.” *Save Mille Lacs Sportsfishing v. Minn. Dep’t of Nat. Res.*, 859 N.W.2d 845, 853-54 (Minn. App. 2015) (Hudson, J., concurring) (indicating that majority opinion noted potential standing issue, but declined to dismiss on that ground as parties had not raised the issue). To satisfy redressability, the injury must also be attributable to the challenged rule, and petitioners must show that the rule is applied to or is about to be applied to their disadvantage. *Rocco Altobelli*, 524 N.W.2d at 34-35 (explaining that injury claimed by petitioners was not attributable to the rule).

In sum, to establish standing under section 14.44, a petitioner must demonstrate (1) a direct interest in the rule that is different in character from that of the citizenry in general; (2) the alleged harm is not speculative or hypothetical; and (3) the alleged harm is uniquely attributable to the rule. *Minn. Voters All. v. State*, \_\_N.W.2d\_\_ (Minn. App. Feb. 1, 2021).

Here, MVA asserts an independent interest in preserving the integrity of elections. Because MVA's interest is no different in character than that of the citizenry in general, MVA must derive any potential standing from its members. *See Save Mille Lacs*, 859 N.W.2d at 854 (noting that a corporation may sue on behalf of its individual members) (citing *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 165-66 (Minn. 1974)); *Byrd*, 495 N.W.2d at 231 (noting union lacked standing because injury to its members was speculative); *Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 177 (Minn. App. 2012) (associations must show injury-in-fact to its members to have standing); *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. App. 2005) (injury-in-fact is concrete and actual or imminent).

Candidate petitioners assert that their interest in the fairness of the elections is different in nature from the citizenry in general because they may assume office if elected. We agree that, because candidate petitioners may assume office if elected, their interest is indeed different in character from the citizenry in general. However, their theory of harm nevertheless fails under the second and third considerations.

Candidate petitioners allege that they have "reason to believe" their right or privilege to take office will be threatened "*if* a significant number of ineligible voters cast ballots[,] thereby undermining the credibility and legitimacy of the election results." (Emphasis added.) Yet, petitioners admit that there is no evidence of voter fraud associated with absentee voters whose statuses have been challenged.<sup>1</sup> They ask this court to

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<sup>1</sup> At oral argument, petitioners admitted there is no evidence of voter fraud related to absentee voters whose statuses have been challenged.

speculate that: (1) there are ineligible voters casting absentee ballots; (2) some of those ineligible voters' statuses are challenged; (3) ballot-board members are counting those ineligible absentee voters' ballots before determining that the voters have overcome the challenge; (4) the certifications under the rule allow for more ineligible challenged voters to cast ballots than in-person oaths under section 204C.12; and (5) those votes harm one candidate or party more than others. This chain of hypothetical facts amounts to no more than "a mere possibility of injury" which cannot confer standing under section 14.44. *Rocco Altobelli*, 524 N.W.2d at 34. For similar reasons, candidate petitioners' theory of harm is too attenuated to be uniquely attributable to the rule under our third consideration. We also note that invalidating the rule would effectively result in no vetting process for challenged absentee voters. This result would be contrary to the very purpose of petitioners' action: "to ensure . . . public confidence in the integrity of Minnesota's elections." Accordingly, we conclude that candidate petitioners lack standing under the second and third considerations because their theory of harm is speculative, hypothetical, and not attributable to the rule.

With respect to Pugh, her basis for standing is even more tenuous than that of candidate petitioners. First, Pugh does not articulate how her interest is any different than that of the citizenry in general, who share an interest in preserving the integrity of elections. The mere possibility of her running for office is not different in character from the possibility that any other citizen might run for office. Second, Pugh's basis for standing is more speculative than that of candidate petitioners because she could not be disadvantaged by the rule if she does not run for office in the future. This is certainly no more than a

“mere possibility of injury.” Finally, like candidate petitioners, Pugh’s alleged injury cannot be attributed to the rule.

We conclude that all petitioners lack standing to challenge the rule under section 14.44 because their theories of injury are speculative, hypothetical, and not attributable to the rule. Accordingly, we need not consider the merits of petitioners’ challenge. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 341 (Minn. 2011) (noting when the issue raised is one of justiciability, courts need not reach the merits of the underlying controversy).

**II. Petitioners are not entitled to fees or expenses under the Minnesota Equal Access to Justice Act (MEAJA), Minn. Stat. §§ 15.471-.474 (2018).**

Under MEAJA, a petitioner who prevails against the state in certain cases may seek fees and expenses. Minn. Stat. § 15.472(a) (“If a prevailing party other than the state, in a civil action . . . against the state, shows that the position of the state was not substantially justified” then the court shall award fees and other expenses.). Because petitioners have not prevailed, we deny their request.

**Petition dismissed.**